



Working Paper No. 182 – March 2017

THE EUROPEAN UNION IN UNITED NATIONS ECONOMIC GOVERNANCE FORA

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Abstract

Despite being one of the “heavyweights” in international trade, finance and development, the European Union’s (EU) presence in the economic governance fora of the United Nations (UN) continues to be fraught with difficulties. Faced with the legal and political hurdles of multilateral diplomacy in a state-centric environment, the EU has had to deal with a lack of status and participation rights, the complexities of an internal coordination process involving 28 Member States, and the challenges of ensuring a cohesive external representation. This contribution provides a brief overview of the legal basis for EU engagement in the UN, the Union’s internal coordination process, as well as the framework governing its external representation. To highlight the patchwork of legal statuses and modes of engagement, we subsequently take a closer look at the EU’s relations with a select number of UN bodies in the area of economic governance. This allows us to illustrate the respective challenges in three scenarios: (1) UN fora where the EU and the EU Member States hold membership rights, where we look at FAO; (2) UN fora where the EU holds an observer or full participant status while its Member States have membership rights, where we look at ECOSOC, its subsidiary bodies, and UNCTAD; and (3) UN fora where the EU Member States are members but where the EU has no formal status: here we look at the World Bank.

Keywords

ECOSOC, European Union, FAO, global economic governance, United Nations, World Bank

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1. INTRODUCTION

The European Union (EU) ranks among the major economic powers in the world. It is one of the world's largest economies in terms of nominal Gross Domestic Product (GDP),¹ the largest exporter of manufactured goods and services, the biggest export market for around 80 countries, and one of the principal sources of foreign direct investments (FDI).² The Euro has been considered as the most important currency after the US Dollar,³ and the EU and its Member States continue to be among the major donors of development aid.⁴ Thus, while the EU ranks among the

¹ World Bank, data of 2015, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (last accessed 14 February 2017).

² European Commission, EU position in world trade, <http://ec.europa.eu/trade/policy/eu-position-in-world-trade/> (last accessed 14 February 2017).

³ Hervé (2012), p. 143.

⁴ OECD, Development aid in 2015 continues to grow despite costs for in-donor refugees, 13 April 2016, www.oecd.org/dac/stats/ODA-2015-detailed-summary.pdf (last accessed 14 February 2017).

heavyweights in international trade, finance and development, it experiences difficulties when it comes to translating this economic clout into political influence in global multilateral organizations. The EU has often been perceived to “punch below its weight” at the multilateral level, and has even been termed a “political dwarf”.⁵

The 2017 European Yearbook of International Economic Law discusses the EU's engagement with a number of international economic governance organizations and institutions. It addresses the persistent difficulties associated with the engagement of a regional organization – the EU – in a state-centric environment, including the questions of legal status, internal coordination and external representation. While other contributions in the Yearbook focus specifically on the International Monetary Fund (IMF)⁶ and the World Trade Organization (WTO),⁷ this contribution only addresses the EU's engagement with (other) bodies of the United Nations (UN) and the UN family of organizations. Its findings therefore do not necessarily apply to the EU's position in the IMF and WTO⁸ and in more informal bodies of global economic governance, such as the G7 and the G20.⁹

The UN's own role in global economic governance is not exactly a success story. Although, pursuant to its Charter, the organization was also set up “to promote social progress and better standards of life in larger freedom” and “to employ international machinery for the promotion of the economic and social advancement of all peoples”,¹⁰ and though one of its purposes is to “achieve international cooperation in solving international problems of an economic [...] character”¹¹, these aims have in practice been overshadowed by the UN's goal to maintain international peace and security.¹² Two of the UN's principal organs were mandated to work on economic governance: the General Assembly (which was *inter alia* tasked to “initiate studies

⁵ Hervé (2012), p. 143. This assessment is not unique to the EU's engagement with economic governance institutions, see e.g. Thomas (2012) on the EU and the International Criminal Court, and Smith (2010) on the EU at the UN Human Rights Council.

⁶ See the contribution to the 2017 European Yearbook of International Economic Law (Vol. 8) by P. Leino.

⁷ See the contributions to the 2017 European Yearbook of International Economic Law (Vol. 8) by C. Kaddous and J. Bohanes.

⁸ For earlier writings on the EU-IMF relationship, see Wouters, Ramopoulos (2016), p. 21-37; Wouters, Van Kerckhoven, Ramopoulos (2013), p. 306-327; Wouters, Van Kerckhoven (2012), p. 221-233. On the EU-WTO relationship, see Wouters (2013), p. 373-383.

⁹ On the EU-G20 relationship, see *inter alia* Wouters, Van Kerckhoven, Odermatt (2013), p. 259-271.

¹⁰ Charter of the United Nations (UN Charter), fourth and eighth recital of the preamble.

¹¹ Article 1(3) UN Charter. Article 55 UN Charter develops this objective further: “With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: a. higher standards of living, full employment, and conditions of economic and social progress and development; b. solutions of international economic [...] problems [...]”

¹² Kirton J, The United Nations, Global Economic Governance and the G20. Lecture given at the University of Leuven, 10 December 2015, text available at www.g20.utoronto.ca/biblio/kirton-un-g20-151210.html (last accessed 14 February 2017).

and make recommendations for the purpose of [...] promoting international cooperation in the economic [...] field [...]”¹³ and, under the authority of the latter,¹⁴ the Economic and Social Council (ECOSOC). Neither of them fully lived up to the Charter’s aspirations. There are many reasons for the UN’s marginalization as an actor in global economic governance, including its primary focus on peace and security and its institutional design, which has often obstructed communication and coordination between the various organs, agencies and other bodies in the UN system.¹⁵ Historically, the UN was quickly sidelined by the IMF and the World Bank, and now stands in the shadow of the G20.

There have been numerous proposals to strengthen the UN’s role in global economic governance.¹⁶ The EU itself has traditionally been a strong advocate of the UN and the UN system.¹⁷ As the European Security Strategy of 2003 underlined, “[s]trengthening the United Nations, equipping it to fulfil its responsibilities and to act effectively, is a European priority”.¹⁸ The Lisbon Treaty additionally strengthened the Union’s commitment to multilateralism in general and to the UN in particular. Article 21 of the Treaty on European Union (TEU)¹⁹ provides that the EU “shall promote multilateral solutions to common problems, particularly in the framework of the United Nations”, and it enshrines the promotion of an “international system based on stronger multilateral cooperation and good global governance” as an objective of the Union’s foreign policy. The EU institutions are tasked to comply with the commitments entered into within the UN framework, and to cooperate with UN bodies where appropriate.²⁰ Also the EU’s 2016 Global Strategy underlines the EU’s determination to “promote a rules-based global order with multilateralism as its key principle and the United Nations at its core.”²¹

However, despite the EU’s economic clout, on the one hand, and its commitment to the UN system, on the other, the EU’s role in UN economic governance for a

¹³ Article 13(1)(b) UN Charter.

¹⁴ Article 60 UN Charter.

¹⁵ Ibid.

¹⁶ See inter alia UNGA Resolutions 67/289 of 9 July 2013 on “The United Nations in global economic governance”; 66/256 of 16 March 2012 on “The United Nations in global governance”; 65/94 of 8 December 2010 on “The United Nations in global governance”; UN Secretary General Report “The United Nations in global economic governance”, A/71/378, 16 September 2016.

¹⁷ See for more details Wouters, Chané (2016), p. 299-323.

¹⁸ European Council, European Security Strategy: A Secure Europe in a Better World, Brussels, 12 December 2003, p. 9.

¹⁹ Consolidated Version of the Treaty on European Union, 7 June 2016, O.J. C 202/13.

²⁰ See e.g. Article 208(2), 214(7), 220(1) TFEU.

²¹ Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union’s Foreign and Security Policy, June 2016, http://eeas.europa.eu/archives/docs/top_stories/pdf/eugs_review_web.pdf (last accessed 14 February 2017).

continues to be fraught with obstacles. This contribution seeks to provide a brief overview of the legal basis for EU engagement in the UN, the Union's internal coordination process, as well as the framework governing its external representation. To highlight the patchwork of legal statuses and modes of engagement, we subsequently take a closer look at the EU's relations with a select number of UN bodies in the area of economic governance. This allows us to illustrate the respective challenges in three scenarios: (1) UN fora where the EU and the EU Member States hold membership rights, where we look at FAO; (2) UN fora where the EU holds an observer or full participant status while its Member States have membership rights, where we look at ECOSOC, its subsidiary bodies, and UNCTAD; and (3) UN fora where the EU Member States are members but where the EU has no formal status: here we look at the World Bank.

2. LEGAL FRAMEWORK FOR EU ENGAGEMENT WITH THE UN AND THE UN SYSTEM

The EU's engagement with the UN and the UN system is governed both by EU law and by the treaties, resolutions, rules of procedure and other instruments that together constitute the legal framework of the UN. EU engagement with the UN, therefore, not only depends on the Union's external relations competences as provided for in the EU Treaties, but also on whether and to what extent UN bodies permit the participation of the EU.

Within the EU's legal framework, Article 220(1) of the Treaty on the Functioning of the European Union (TFEU)²² provides that the "Union shall establish all appropriate forms of cooperation with the organs of the United Nations and its specialised agencies", thus recognizing the importance of EU-UN cooperation. Indeed, EU engagement with multilateral fora is vital in order to ensure effective EU external action, in particular in areas of exclusive EU competence. Similar provisions exist for a variety of policy areas, e.g. on environmental policy (Article 191(4) TFEU), development cooperation (Article 211 TFEU), and economic, financial and technical cooperation (Article 212(3) TFEU). While these provisions empower and oblige the Union to cooperate with the UN and other international organizations, they only cover organizational relations,²³ whereas substantive agreements negotiated within the framework of the UN must be concluded in line with the requirements and procedure outlined in Articles 216 and 218 TFEU. As Article 216 TFEU provides, the Union may

²² Consolidated Version of the Treaty on the Functioning of the European Union, 7 June 2016, O.J. C 202/47.

²³ Geiger R in Geiger R, Khan DE, Kotzur M (2015) Article 220 para. 4.

enter into a binding legal agreement with an international organization if either one of four requirements are met: where (1) the Treaties so provide; (2) where the conclusion of an agreement is necessary in order to achieve one of the objectives referred to in the Treaties; (3) where this is provided for in a legally binding Union act; or (4) where this is likely to affect common rules or alter their scope. The first category merely declaratorily provides that the Union may enter into agreements if this is already provided for elsewhere in the Treaties. For example, Article 207(3) TFEU grants the Union this competence in the area of the common commercial policy, as does Article 212(3) TFEU in the area of economic, financial and technical cooperation. The third category mirrors this provision at the level of secondary EU law. Categories 2 and 4 grant the Union implicit treaty making powers, in line with established case law of the Court of Justice of the European Union (CJEU).²⁴

However, the EU's internal competence to cooperate with the UN and the UN system does not necessarily correspond to actual cooperation between both organizations. The UN remains a predominantly state-centric institution, thus limiting the possibilities for formal participation of the EU. As Article 4(1) UN Charter provides, "[m]embership in the United Nations is open to all other peace-loving *states*" (emphasis added), which is widely understood as limiting membership of the main organization to states, thus excluding non-state entities such as the EU.²⁵ However, UN agencies and other fora are free to include different provisions in their constituent treaties, rules of procedure etc. The Constitution of the Food and Agriculture Organization (FAO), for example, was amended in 1991 to include a regional economic integration organization (REIO) clause, permitting the EU (in those days the European Economic Community) to join the FAO as a "member organization".²⁶ Today, the EU holds a variety of different statuses in the various bodies of the UN system, ranging from membership status, to full participant, enhanced observer, observer or no status. Only membership grants the EU the full range of participatory rights, including the right to vote. As an observer, the EU may usually attend (formal) meetings and make interventions – though its speaking time slots will often be later and shorter than those of members. Observers are usually seated apart from the Member States, may not raise points of order or propose candidates. In a number of UN bodies, the EU has no formal status at all, forcing it to rely entirely on representation through the EU Member States. This patchwork of statuses and

²⁴ Opinion 1/03 Lugano Convention [2006] ECR I-1145; Opinion 1/76 European laying-up fund for inland waterway vessels [1977] ECR 741; Opinion 1/94 WTO [1994] ECR I-5267. See Kuijper, Wouters, Hoffmeister, De Baere, Ramopoulos (2015), p. 1-11.

²⁵ Hoffmeister (2007), p. 41.

²⁶ Article II(3) FAO Constitution.

participation rights has long been considered as unsatisfactory among EU policy makers. In 2003, the Commission demanded that the Community “should be given the possibility to participate fully in the work of UN bodies where matters of Community competence are concerned, and Member States should contribute effectively towards this”.²⁷ With full participation out of reach, in 2012 the then European Commission President Barroso and Vice-President Ashton proposed a more sober “Strategy for the progressive improvement of the EU status in international organisations and other fora in line with the objectives of the Treaty of Lisbon”.²⁸ Though still calling for an “improvement of the EU status and its alignment with the objectives of the EU Treaties”, it avoided any reference to concrete negotiation goals.²⁹ In practice, EU efforts for status upgrades have faced serious political resistance, both internally and externally. The saga around the EU’s enhanced participation rights in the UN General Assembly³⁰ appears to have had a dampening effect on similar efforts in other fora.

3. INTERNAL COORDINATION AND EXTERNAL REPRESENTATION

As a Union of (still) 28 Member States, internal coordination is an essential aspect of EU external action. Its primary function is to ensure the coherent presence of the EU at the international level, meaning that all EU actors – EU and EU Member States representatives – speak with one voice and vote cohesively. In those fora where the EU itself does not have a formal status, internal coordination serves to ensure that the EU Member States represent existing Union positions, and in fora where both the EU and the EU Member States have membership status, internal coordination is vital to clarify the internal division of competences and, thus, who will exercise the participation rights with regard to each individual agenda item.³¹

In line with the principle of sincere cooperation (Article 4(3) TEU), the EU Member States must refrain from any act that may run counter to obtaining the EU’s

²⁷ Communication from the Commission to the Council and the European Parliament – The European Union and the United Nations: The choice of multilateralism, 10 September 2003, COM(2003) 526 final, p. 23.

²⁸ Communication to the Commission from the President in Agreement with Vice-President Ashton – Strategy for the progressive improvement of the EU status in international organisations and other fora in line with the objectives of the Treaty of Lisbon, 20 December 2012, C(2012) 9420 final, on file with the authors.

²⁹ See for a detailed analysis of the Barroso-Ashton Strategy, Wouters, Chané, Odermatt, Ramopoulos (2015), p. 45-74.

³⁰ In 2011 the EU’s was granted additional participation rights in the UNGA, see UNGA Res 65/276 (3 May 2011) UN Doc A/RES/65/276. For a detailed analysis see inter alia Brewer (2012), p. 181-225; Wouters, Ramopoulos, Odermatt (2011), p. 166-170; Wouters, Odermatt, Ramopoulos (2013), p. 211-223.

³¹ In case of ‘mixity’, membership rights can only be exercised on an alternative basis by either the EU or its Member States, see e.g. Article II(8) FAO Constitution.

objectives and instead assist the Union in fulfilling its tasks. On the basis of this principle, Member States are required to coordinate their actions in international organizations, especially for those competences that refer to “integrated policies” – previously called Community competences. It is interesting to point to the original Article 116 of the Treaty establishing the European Economic Community (EEC Treaty),³² which required that, “[f]rom the end of the transitional period onwards, Member States shall, in respect of all matters of particular interest to the common market, proceed within the framework of international organisations of an economic character only by common action.” This provision was deleted by the Maastricht Treaty, albeit in somewhat ambivalent circumstances and against the will of the European Commission.³³ It is important to note that, from a strictly legal point of view, for the EU’s actions on economic, financial and trade matters within global governance fora, including of the UN, the legal principles and doctrines applicable are fundamentally those of the TFEU, combined with the principle of sincere cooperation, and not those laid down in Articles 24(3) and 34 TEU, which only apply to the EU’s Common Foreign and Security Policy (CFSP).³⁴ In practice, the distinction does not always appear to be made consistently in the context of EU coordination efforts at the UN.³⁵

Coordination between the EU and the EU Member States is a complex process, from strategy development in Brussels, to the fine-tuning on the ground in New York, Geneva, Rome and other UN venues. In Brussels, the Commission and several working parties of the Council prepare the Union’s positions at the UN, depending on the subject matter and the forum. At a general level, the United Nations Working Party (CONUN) develops the Union’s UN policy, with a focus on strengthening and reforming the UN system, and maintaining international peace and security. Other Council working parties have regional and thematic portfolios. The Coordination

³² Treaty establishing the European Economic Community, 25 March 1957, 298 U.N.T.S. 11.

³³ Cloos, Reinesch, Vignes, Weyland (1993), p. 345-346.

³⁴ Article 24(3) TEU provides: “The Member States shall support the Union’s external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and shall comply with the Union’s action in this area. The Member States shall work together to enhance and develop their mutual political solidarity. They shall refrain from any action which is contrary to the interests of the Union or likely to impair its effectiveness as a cohesive force in international relations.” This provision aims at ensuring the effectiveness of the EU at the international stage by obliging the EU member states to ensure a cohesive external façade through cooperation and coordination. It consequently limits, in the area of CFSP, the Member States’ freedom to take unilateral action in UN fora. This duty to cooperate and coordinate in the framework of international organizations, as far as CFSP is concerned, is enshrined in Article 34(1) TEU. It provides that “Member States shall coordinate their action in international organisations and at international conferences” and that they “shall uphold the Union’s positions in such forums”. Article 34(1), second para., and 34(2), first para., TEU also makes special provisions for those international fora where not all EU Member States are represented. The rules on the UN Security Council in Article 34(2), second para., constitute a remarkable derogation from these principles.

³⁵ This could be regarded as a form of ‘intergovernmentalisation’ of the external dimension of EU integrated policy areas.

Working Party of the Agriculture and Fisheries Council, for example, coordinates EU and EU Member States positions at meetings of the FAO, whereas the Working Party on Forestry prepares issues discussed in the FAO Committee on Forestry (COFO), and the Codex Alimentarius Working Party coordinates positions in the Codex Alimentarius Commission, where the EU and EU Member States have membership status. The Union Delegations in New York, Geneva, Washington DC, Rome etc. chair the local coordination process, having taken over this role from the rotating Council Presidency since the entry into force of the Lisbon Treaty.³⁶

With regard to the external representation of the Union, much has changed with the entry into force of the Lisbon Treaty. The reform of the Union's external relations architecture, including among others the creation of the High Representative for Foreign Affairs and Security Policy and the establishment of the European External Action Service, is aimed at increasing the effectiveness of EU foreign policy. Ideally the EU should now be represented by its own officials, leaving only a limited role for the rotating Council Presidency. In practice, however, the EU's limited participation rights in most UN bodies still force it to rely on representation through the Member States, usually the one holding the Council Presidency. The EU's external representation at the UN is, therefore, still spread on many shoulders. Depending on the subject-matter and on the level of the meeting, the EU will be represented by the Commission (in matters that do not fall under the CFSP), the President of the European Council and the High Representative (in CFSP matters) and/or the EU Delegation. The Member States continue to speak on their own behalf and will speak "on behalf of the EU" whenever the Union's lack of participation rights so requires. If a matter falls within an area of both EU and national competence, the EU's representative will be determined on the basis of whether the "thrust" of the issue falls under EU or national competence.³⁷

4. EU ENGAGEMENT WITH UN ECONOMIC GOVERNANCE FOR A

Over time, the EU has acquired a patchwork of legal statuses and participation rights in the various UN bodies. Full membership, such as in the FAO (4.1.) is still the exception. In most bodies, the EU holds observer status, for example in ECOSOC and its subsidiary bodies, as well as in the UN Conference on Trade and

³⁶ Council of the European Union, Presidency report to the European Council on the European External Action Service, 23 October 2009, (14930/09), para. 31.

³⁷ Cf. Arrangement concerning preparation for the meetings of the FAO as well as interventions and voting, 18 December 1991, unpublished, reproduced in Frid (1995), Annex VI, Article 2.3. The 1991 Arrangement was updated in 1992 and 1995.

Development (UNCTAD), which is a subsidiary body of the UN General Assembly (4.2.). Finally, there remain a number of bodies within the UN framework, where the EU has no formal status, such as the World Bank, although its Member States may be members (4.3.).

4.1. Member status: The EU in the FAO

The FAO is one of the very few UN organizations where the EU has obtained membership status. Founded in 1945 as a specialized agency of the UN, the FAO pursues the three-fold aim to eradicate hunger and poverty, to promote economic and social progress, and to contribute to the sustainable management of natural resources.³⁸ First contacts between the FAO and the European Economic Community (EEC) were already established in the 1950s, reflecting the Union's competences in the area of agriculture and fisheries.³⁹ Though a formal agreement between the EEC and the FAO was initially considered, it was at that time rejected as not feasible.⁴⁰ Instead, the EEC was granted observer status through an exchange of letters between the Director-General of the FAO and the President of the European Commission in 1962.⁴¹ As the letters provided, cooperation between the EEC and the FAO was supposed to take the form of information exchange, consultation, participation of observers in meetings of common interest (upon invitation), and the potential creation of mixed committees to examine topics of common interest. These participation rights were soon considered as insufficient by the European Commission. The Commission deplored in particular that it "could not table any proposals, did not take part in the policy making of the organization, and was not able to fully participate in technical bodies established in the framework of the FAO".⁴² After exploratory talks, the Council of the European Community decided on 22 October 1990 to send a letter requesting the formal opening of accession negotiations.⁴³ The negotiations were formally initiated on 1 February 1991. In June 1991, the FAO Council debated the necessary amendments to the FAO Constitution,

³⁸ FAO, About FAO, www.fao.org/about/en/ (last accessed 14 February 2017).

³⁹ Agriculture has been one of the core competences of the EU since the Treaty establishing the European Economic Community tasked the EEC with the creation of a common agricultural policy ('CAP'), Article 3(d), 38-47 EEC Treaty.

⁴⁰ Schild (2013), p. 225.

⁴¹ Exchange of letters between the Director-General of the FAO, Sen, and the President of the European Commission, Hallstein, 25 October 1962 and 11 December 1962, reprinted in Commission of the European Communities, 'The European Community, international organizations and multilateral agreements', 3rd ed., January 1983, p. 97-99.

⁴² Frid (1993), p. 241.

⁴³ See Commission of the European Communities, Proposal for a Council decision on the access of the European Community to the FAO at the 26th session of the FAO Conference, 18 October 1991, COM(91)387 final; Frid (1993), p. 246.

which would allow for the accession of a REIO as a member organization. Among others, a clause was inserted that provided:

The Conference may by a two-thirds majority of the votes cast, provided that a majority of the Member Nations of the Organization is present, decide to admit as a Member of the Organization any regional economic integration organization meeting the criteria set out in paragraph 4 of this Article, which has submitted an application for membership and a declaration made in a formal instrument that it will accept the obligations of the Constitution as in force at the time of admission.⁴⁴

Eligibility was limited to REIOs which are:

constituted by sovereign States, a majority of which are Member Nations of the Organization, and to which its Member States have transferred competence over a range of matters within the purview of the Organization, including the authority to make decisions binding on its Member States in respect of those matters.⁴⁵

This provision, though referring to REIOs generally, was clearly tailored towards the EEC, and it is doubtful whether there is currently any other international organization which would meet the required level of integration. On 25 November 1991 the Council of the European Community requested admission, which was accepted the next day by the FAO Conference with 98 states voting in favour, 6 against, and 3 abstentions.⁴⁶

As a “Member Organization”, the EU enjoys generally the same participation rights as Member States, including the right to vote. However, owing to its particular nature, several exceptions were made. In particular, as a Member Organization, the EU may not participate in certain restricted committees⁴⁷ and the committees responsible for the internal working of the Conference. Since the EU does not contribute to the budget of the FAO but only pays a sum that covers the administrative expenses of its membership, it does not have voting rights on budget matters.⁴⁸ The EU may not hold office in the Conference, the Council and their subsidiary bodies, nor does it have the right to vote for elective places in both organs.⁴⁹

In addition, several arrangements were made to deal with the parallel membership of both the EU and the EU Member States (“mixity”). As Article II(8) of the FAO

⁴⁴ Article II(3) FAO Constitution.

⁴⁵ Article II(4) FAO Constitution.

⁴⁶ Frid (1993), p. 246.

⁴⁷ Programme Committee, Finance Committee, Committee on Constitutional and Legal Matters, Article II(9) FAO Constitution, Rule XLVI FAO General Rules.

⁴⁸ Article XVIII(6) FAO Constitution.

⁴⁹ Article II(9) FAO Constitution; Rules XLIII(3), XLIV FAO General Rules.

Constitution provides, a Member Organization “shall exercise membership rights on an alternative basis with its Member States that are Member Nations of the Organization in the areas of their respective competences”. It, therefore, needs to be established on a case by case basis whether the EU or the Member States will exercise their participatory rights, which requires a high degree of internal coordination. In order to increase the effectiveness of this process, the Commission and the Council adopted an internal “Arrangement Regarding Preparation for FAO Meetings and Statements and Voting”.⁵⁰ It provides that the EU will exercise membership rights if an issue falls in the area of exclusive EU competence, and that the EU Member State holding the rotating Council Presidency will represent the Union in case of Member State competence. In cases of mixed competence, a common position should be sought, based on whether the “thrust” of the issue falls in exclusive EU or Member States competence,⁵¹ with the Permanent Representatives Committee of the Council (COREPER) deciding in case of a disagreement.⁵² Nevertheless, internal coordination remained cumbersome and has prompted the Commission to propose a set of revised amendments in 2013.⁵³ Among others, the draft arrangements proposed that full statements should only be prepared in exceptional cases, while the new default *modus operandi* for EU positions in the FAO should be the one of “lines to take”.⁵⁴ These draft arrangements have since been under discussion in the Council, and as of early 2017 adoption did not yet appear to be in sight.

In addition, the FAO Constitution and General Rules oblige the EU and the EU Member States to be transparent about their internal division of competences. At a general level, the EC had to submit a declaration of competence when it applied for membership, specifying its internal division of competences.⁵⁵ Any subsequent changes in the division of competences must be communicated to the FAO.⁵⁶ In

⁵⁰ Arrangement concerning preparation for the meetings of the FAO as well as interventions and voting, 18 December 1991, unpublished, reproduced in Frid (1995), Annex VI, Art. 2.1-2.2.

⁵¹ Ibid Article 2.3; Schild (2013), p. 228.

⁵² Ibid Article 1.12.

⁵³ Communication from the Commission to the Council, The role of the European Union in the Food and Agriculture Organisation (FAO) after the Treaty of Lisbon: Updated Declaration of Competences and new arrangements between the Council and the Commission for the exercise of membership rights of the EU and its Member States, 29 May 2013, COM(2013) 333 final.

⁵⁴ Ibid, Annex 2, chapter 2.3.

⁵⁵ Art. II(5) FAO Constitution.

⁵⁶ Article II(7) FAO Constitution. See Council Decision of 25 November 1991, Declaration of Competence by the European Union in respect of matters covered by the constitution of the Food and Agriculture Organization of the United Nations (Pursuant to the General Rules of the Organization) (O.J. 1991 C 238); updated by a letter sent on 4 October 1994 from the President of the Council to the Director-General of the FAO, cf. Communication from the Commission to the Council on the notification of a change in the distribution of competence between the EC and its Member States pursuant to Article II(7) of the FAO Constitution, SEC 94 (437) final; Schild (2013), p. 226 note 35.

addition, the EU and the EU Member States must indicate before any meeting of the FAO who is competent with regard to which agenda item and who will exercise the right to vote.⁵⁷ Other Member States of the FAO may at any time request the EU and the EU Member States to disclose their internal division of competences with regard to any specific matter.⁵⁸ These transparency requirements place an additional burden on the EU – one with which it does not always comply. For example, the EU's current declaration of competences still dates back to 1994, despite the subsequent developments in EU primary and secondary law. An updated draft declaration was only proposed by the Commission in 2013 and is still under consideration in the Council.⁵⁹

4.2. Observer status: The EU in ECOSOC, its subsidiary bodies, and UNCTAD

In most (but not all) UN organs, bodies, programmes, funds and specialized agencies the EU has been granted an observer status in the course of time: ECOSOC is one of them. Unlike the FAO, ECOSOC is a body with limited membership. Its 54 members are elected by the UN General Assembly for a term of three years, taking into account geographical representation. To coordinate the membership bids of EU Member States, the EU has developed a complex system which determines the election intervals for each EU Member State.⁶⁰

Relations between ECOSOC and the EEC began on an informal basis and were progressively strengthened in the 1960s and 1970s. On 3 August 1967 ECOSOC adopted Resolution 1267 (XLIII), which recognized the increasing number of intergovernmental organizations active in the areas of economic and social governance and the fact that many of these organizations had already established informal and formal collaboration with various UN bodies.⁶¹ Considering that the development of “further contacts on a more systematic basis” would be “useful”, ECOSOC requested the UN Secretary General to propose intergovernmental organizations outside the UN framework which should be granted observer status in

⁵⁷ Rule XLII(2) General Rules of the FAO.

⁵⁸ Rule XLII(1) General Rules of the FAO.

⁵⁹ Draft Declaration of competences by the European Union in respect of matters covered by the Constitution of the Food and Agriculture Organisation of the United Nations (FAO), see Communication from the Commission to the Council, The role of the European Union in the Food and Agriculture Organisation (FAO) after the Treaty of Lisbon: Updated Declaration of Competences and new arrangements between the Council and the Commission for the exercise of membership rights of the EU and its Member States, 29 May 2013, COM(2013) 333 final, Annex 1.

⁶⁰ Winkelmann (2000), p. 425 f.

⁶¹ ECOSOC Resolution 1267 (XLIII) “Relations with non-United Nations intergovernmental organizations in the economic and social field”, 3 August 1967.

the ECOSOC. It was considered that these organizations should be entitled to participate in the debates of the Council, without having the right to vote. Following the UN Secretary General's report, ECOSOC extended a standing invitation to the EEC, granting it the right to "participate, with the approval of the Council and without the right to vote, in the Council's debates on questions of [its] concern".⁶² The EEC's *ad hoc* participation, subject to invitation, was consequently turned into a permanent observer status. Rule 79 of the ECOSOC Rules of Procedure today provides:

Representatives of intergovernmental organizations accorded permanent observer status by the General Assembly and of other intergovernmental organizations designated on an *ad hoc* or a continuing basis by the Council on the recommendation of the Bureau, may participate, without the right to vote, in the deliberations of the Council on questions within the scope of the activities of the organizations.

A similar provision can be found in the joint Rules of Procedure of the currently eight functional commissions⁶³ of ECOSOC.⁶⁴ Here, the EU is equally entitled to participate as an observer without voting rights.

An exceptional case, however, was the former Commission on Sustainable Development (CSD), which was established in 1993 as a functional commission of ECOSOC, tasked with ensuring the follow-up to the 1992 United Nations Conference on Environment and Development (Rio Conference) and monitoring the implementation of the Agenda 21.⁶⁵ The EC had participated as a "full participant" in the Rio Conference, a status which was then perpetuated in the CSD.⁶⁶ As a "full participant", the EC enjoyed more rights than in the other functional commissions of ECOSOC, including the right to speak, the right of reply, the right to introduce proposals and amendments, as well as the right to take part in informal (and not merely formal) meetings.⁶⁷ While the EC did not receive the right to vote, it was granted the right to submit proposals that had to be voted on, if CSD Members so

⁶² Decision reprinted in Commission of the European Communities, 'The European Community, international organizations and multilateral agreements', 3rd ed., January 1983, p. 35.

⁶³ Statistical Commission, Commission on Population and Development, Commission for Social Development, Commission on the Status of Women, Commission on Narcotic Drugs, Commission on Crime Prevention and Criminal Justice, Commission on Science and Technology for Development, United Nations Forum on Forests, see ECOSOC, Subsidiary bodies of ECOSOC, www.un.org/en/ecosoc/about/subsidiary.shtml (last accessed 14 February 2017).

⁶⁴ Rules of Procedure of the Functional Commissions of the Economic and Social Council, Rule 74: "Representatives of intergovernmental organizations accorded permanent observer status by the General Assembly and of other intergovernmental organizations designated on a continuing basis by the Council or invited by the commission may participate, without the right to vote, in the deliberations of the commission on questions within the scope of the activities of the organizations".

⁶⁵ ECOSOC Decision 1993/207 (12 February 1993) UN Doc E/1993/207.

⁶⁶ Sack (1995), p. 1249.

⁶⁷ ECOSOC Decision 1995/201 (8 February 1995) UN Doc E/1995/201.

requested.⁶⁸ In return, the EC committed to ensuring transparency about its internal division of competences between the Community and the Member States, by submitting a general declaration of competence.⁶⁹ In line with UN General Assembly Resolution 66/288, the CSD was replaced by a High-level Political Forum on Sustainable Development (HLPF) in 2013.⁷⁰ The EU retained its “full participant” status in those meetings convened under the auspices of the ECOSOC, while its “enhanced observer” rights apply in meetings convened under the auspices of the UN General Assembly. UN General Assembly Resolution 67/290 explicitly provides that the arrangements of UN General Assembly resolution 65/276 and ECOSOC decision 1995/201 apply.⁷¹

The EU also has observer status in the regional commissions of ECOSOC.⁷² Cooperation between the EEC and the UN Economic Commission for Europe (UNECE) began in an informal manner, based on an exchange of letters between the Executive Secretariat of UNECE and the EEC Commission in 1958.⁷³ Both organizations agreed to exchange information and to consult on issues of common interest. In addition, it was agreed that the EEC could participate as an observer in meetings of UNECE subject to invitation. Subsequently, the EEC’s participation rights were progressively expanded⁷⁴ and in 1975 the EEC was granted regular observer status.⁷⁵ Beyond that, and thanks to REIO clauses, the EU has become a party to several international conventions that were negotiated under the auspices of UNECE. For example, the EU and the EU Member States are parties to the Convention on Long-Range Transboundary Air Pollution.⁷⁶ Here again, the abovementioned issues associated with “mixity” arise. As provided for in Rule 29(7) and (8) of the Rules of procedure for sessions of the Executive Body for the Convention on Long-range Transboundary Air Pollution, the EU and the EU Member

⁶⁸ Ibid.

⁶⁹ Sack (1995), p. 1250.

⁷⁰ UNGA Res 66/288 (27 July 2012) UN Doc A/RES/66/288, para. 84.

⁷¹ UNGA Res 67/290 (9 July 2013) UN Doc A/RES/67/290, para. 10.

⁷² For a more detailed analysis of the Union’s role in UNECE see Schmidt (2015), p. 40-43.

⁷³ Exchange of letters between the Executive Secretary of the UNECE, Tuomioja, and the European Commissioner for External Relations, Rey, 30 September and 7 October 1958, reprinted in Commission of the European Communities, ‘The European Community, international organizations and multilateral agreements’, 3rd ed., January 1983, p. 44-46.

⁷⁴ Scheffler (2011), p. 360 note 210.

⁷⁵ UNECE Decision L (XXX) 15 April 1975, reprinted in Commission of the European Communities, ‘The European Community, international organizations and multilateral agreements’, 3rd ed., January 1983, p. 43.

⁷⁶ Convention on Long-Range Transboundary Air Pollution (13 November 1979, entry into force 16 March 1983) 18 ILM 1442 (1979). See the REIO clause in Article 14 of the Convention which provides: ‘The present Convention shall be open for signature [...] by regional economic integration organizations, constituted by sovereign States members of the Economic Commission for Europe, which have competence in respect of the negotiation, conclusion and application of international agreements in matters covered by the present Convention’. See also Council Decision on the conclusion of the Convention on long-range transboundary air pollution, 11 June 1981, 81/462/EEC.

States must exercise their voting rights on an alternative basis, to avoid that a vote counts twice.⁷⁷ This, again, requires the EU and the EU Member States to determine on a case by case basis who will exercise voting rights in the Executive Body.

UNCTAD is another body where critics observed that the EU's observer status did not reflect the major competences it had been granted internally.⁷⁸ UNCTAD was established in 1964 as a subsidiary body of the UN General Assembly, tasked with promoting international trade and economic development, policy formulation and initiating the negotiation of international legal instruments in the field of trade.⁷⁹ UNCTAD's mandate also foresaw that it establish links and cooperate with 'intergovernmental bodies whose activities are relevant to [UNCTAD's] functions',⁸⁰ the representatives of which should then be allowed to 'participate, without vote, in its deliberations and in those of the subsidiary bodies and working groups established by it'.⁸¹ In line with this, the EU participates as an observer in the sessions of the Conference, the Trade and Development Board, as well as the subsidiary organs and working groups.⁸² In the latter, the EU is de facto able to participate as a full participant.⁸³ In addition, the EU consults and exchanges documentation with the UNCTAD Secretariat. Post-Lisbon, the EU's external representation and internal coordination mechanisms have been amended to reflect the Union's new external relations architecture. The EU Delegation in Geneva now represents the EU and its Member States in UNCTAD, with the exception of the Working Party on the Strategic Framework and the Programme Budget.⁸⁴ The EU Delegation also chairs the internal

⁷⁷ Rules of procedure for sessions of the Executive Body for the Convention on Long-range Transboundary Air Pollution as adopted by decision 2010/9 and amended by decision 2013/1, https://www.unece.org/fileadmin/DAM/env/documents/2016/AIR/Decision2010_9and2013_1.pdf (last accessed 14 February 2017).

⁷⁸ Emerson et al. (2011), p. 78.

⁷⁹ UNGA Res 1995 (XIX) (30 December 1964) UN Doc A/RES/1995(XIX), Article II para 3.

⁸⁰ Ibid, Article II para. 18 and 19.

⁸¹ Ibid, Article II para. 11. See also UNCTAD, Rules of Procedure, rule 80: 'Representatives of [...] the intergovernmental bodies referred to in paragraphs 18 and 19 of General Assembly resolution 1995 (XIX) which are designated for this purpose by the Conference or the Board may participate, without the right to vote, in the deliberations of the Conference, its main committees and other sessional bodies upon the invitation of the President or Chairman, as the case may be, on questions within the scope of their activities' and the similar wording in UNCTAD, Rules of Procedure of the Trade and Development Board, rule 76 and UNCTAD, Rules of Procedure of the Main Committees of the Trade and Development Board, rule 74.

⁸² See UNCTAD, List of intergovernmental organizations participating in the activities of UNCTAD, 27 October 2014, TD/B/IGO/IST/11, p. 4.

⁸³ Emerson et al. (2011), p. 78; Scheffler (2011), p. 446 and 619.

⁸⁴ Barone B (2016) The United Nations and the EU Trade Policy: the case of UNCTAD. European Parliament, Directorate-General for External Policies, Policy Department, DG EXPO/B/PolDep/Note/2016_34, p. 6. See also Permanent Delegation of the European Union to the UN office and other international organisations in Geneva, Working with UNCTAD, http://collections.internetmemory.org/haeu/content/20160313172652/http://eeas.europa.eu/delegations/un_geneva/eu_un_geneva/economic_social/unctad/index_unctad_en.htm (last accessed 14 February 2017).

coordination process among EU Member States.⁸⁵ Beyond that, the EU has become a party to a number of commodities agreements that were negotiated under the auspices of UNCTAD. Initially, these negotiations were only open to states, while the EEC was merely granted a consultative status,⁸⁶ despite its far-reaching internal competences in these areas. Since the 1960s this has gradually changed,⁸⁷ and today the EU is a member of several commodities organizations, sometimes to the exclusion of EU Member States.⁸⁸

In their 2012 “Strategy for the progressive improvement of the EU status in international organisations and other fora in line with the objectives of the Treaty of Lisbon”, then European Commission President Barroso and Vice-President Ashton argued that this patchwork of limited participation rights “restrict[ed the] EU’s ability to effectively represent and participate”.⁸⁹ They proposed that an “enhanced observer status”, similar to the one obtained in the UN General Assembly, should be the goal for EU participation also in other UN bodies, in particular ECOSOC and its subsidiary bodies.

There should also be an effort to examine the political (and legal) feasibility to achieve enhanced rights along the lines of those in UNGA resolution 65/276 in certain UN programmes and funds and specialized agencies, where the EU usually enjoys observer status. In the case of UN principal organs, the focus should be on the Economic and Social Council (ECOSOC) and at a later stage possibly also its subsidiary bodies (e.g. UNECE).⁹⁰

Interestingly, UNCTAD was not explicitly mentioned. In any case, so far, these plans appear to have remained theoretical – the 2012 Strategy was even taken off-line by

⁸⁵ See for the internal division of competences in the EU Delegation of the European Union to the UN and other international organisations in Geneva, About the EU Delegation in Geneva, 12 May 2016, https://eeas.europa.eu/delegations/un-geneva/659/about-eu-delegation-geneva_en (last accessed 14 February 2017).

⁸⁶ Scheffler (2011), p. 341-342.

⁸⁷ See eg Schermers, Blokker (2011), para. 1773 and Scheffler (2011), p. 340-350.

⁸⁸ For example in the International Coffee Organization, the International Cocoa Organization and the International Olive Council. In the International Organisation of Vine and Wine (OIV), on the other hand, only (some) EU Member States are represented. However, as the Court of Justice of the EU held, the fact that the EU is not itself a member of the OIV does not preclude it from establishing a position to be adopted on its behalf by the EU Member States with regard to OIV recommendations, if these recommendations are ‘capable of decisively influencing the content of the legislation adopted by the EU legislature in the area of the common organisation of the wine markets’, Judgment C-399/12 Germany v Council ECLI:EU:C:2014:2258, para. 63.

⁸⁹ Communication to the Commission from the President in Agreement with Vice-President Ashton – Strategy for the progressive improvement of the EU status in international organisations and other fora in line with the objectives of the Treaty of Lisbon, 20 December 2012, C(2012) 9420 final, on file with the authors, p. 1.

⁹⁰ Ibid, p. 4.

the Commission - and no efforts like the ones made in the UN General Assembly seem to be underway.

4.3. No formal status: The EU and the World Bank

Finally, there are a number of UN bodies active in global economic governance where the EU has no formal status. For example, despite being a major donor of ODA in general and ranking third among the contributors to World Bank trust funds,⁹¹ the EU has no formal status in the World Bank and only observer status in the “Joint Ministerial Committee of the Boards of Governors of the World Bank and the International Monetary Fund on the Transfer of Real Resources to Developing Countries” (better known as Development Committee).⁹² The World Bank only recognizes states as members. The Member States’ ministers of finance or development sit on the World Bank’s Board of Governors, and they appoint the World Bank’s 25 Executive Directors, who, together with the President of the World Bank Group, make up the Boards of Directors.⁹³ Three of the EU Member States are among the World Bank’s largest members and may consequently appoint their own Executive Director (France, Germany and the United Kingdom).⁹⁴ The other EU Member States are spread across seven constituencies, five of which are currently led by an Executive Director from an EU Member State (Belgium, Denmark, Italy, the Netherlands and Spain).⁹⁵

Development policy is a ‘parallel’ shared competence of the EU and its Member States (Article 4(4) TFEU). While the exercise of the competence by the Union does not prevent the Member States from exercising their competences, the principle of sincere cooperation requires them to refrain from any action that may run counter to obtaining the EU’s objectives.⁹⁶ Consequently, if a matter at the World Bank falls into an area that has become increasingly ‘communitarised’ or governed by agreements

⁹¹ Viilup E (2016) The role of the World Bank in international trade policy. European Parliament, Directorate-General for External Policies, Policy Department, Briefing, DG EXPO/B/PolDep/Note/2016_29, p. 3.

⁹² Wouters, Hoffmeister, Ruys (2006), p. 403. Here, the EU is represented by its Development Commissioner, see Baroncelli (2011), p. 641.

⁹³ See for more details World Bank, Organization, www.worldbank.org/en/about/leadership (last accessed 14 February 2017).

⁹⁴ See International Bank for Reconstruction and Development, International Finance Corporation, International Development Association, Executive Directors and Alternates, 26 January 2017, <http://siteresources.worldbank.org/BODINT/Resources/278027-1215526322295/BankExecutiveDirectors.pdf>, and Multilateral Investment Guarantee Agency, Directors and Alternates, 26 January 2017, <http://siteresources.worldbank.org/BODINT/Resources/278027-1215526322295/MIGADirectors.pdf> (both last accessed 14 February 2017).

⁹⁵ Ibid.

⁹⁶ See supra section 3.

between the EU and third states, EU Member States should represent the position of the Union.⁹⁷

Compared to other international organizations, however, EU coordination at the World Bank is less developed and more recent. In particular, there is no permanent structure of coordination in Brussels, such as exists for example with regard to EU participation in the FAO (see above) or the UN human rights fora (Human Rights Working Group of the Council of the European Union, COHOM).⁹⁸ However, coordination takes place in Washington between the EU Executive Directors and EU Member State representatives. In 2003, under the Italian Presidency, the Italian Executive Director established an informal consultation process of the EU Executive Directors in Washington, to coordinate European positions on the Board of Directors, exchange information and agree on joint positions.⁹⁹ The EU Delegation in Washington participates in these meetings as an observer.¹⁰⁰ Coordination is hampered in particular by the lack of a permanent forum in Brussels, the disparate representation of EU Member States in the World Bank (with ministers covering a diverse range of portfolios), the quick reaction times necessitated by World Bank projects, and the governance structure of the World Bank, which disperses EU Member States across different constituencies.¹⁰¹

Nevertheless, the EU has developed a strong partnership with the World Bank, as indicated by the EU's financial contributions to the World Bank's funds. In 2001, both organizations concluded a "Trust Funds and Co-Financing Framework Agreement", subsequently renewed and revised in 2009,¹⁰² 2014¹⁰³ and 2016,¹⁰⁴ which governs the use of EU budget money for World Bank development projects. The European

⁹⁷ Baroncelli (2013), p. 209.

⁹⁸ Eurodad, European Coordination at the World Bank and International Monetary Fund: A Question of Harmony? (2016), p. 13.

⁹⁹ Baroncelli (2013) 205; Baroncelli (2011) n 6.

¹⁰⁰ Eurodad, European Coordination at the World Bank and International Monetary Fund: A Question of Harmony? (2016), p. 13.

¹⁰¹ Ibid, p. 14.

¹⁰² Trust Funds and Cofinancing Framework Agreement between the European Community, represented by the Commission of the European Communities, and the International Bank for Reconstruction and Development, the International Development Association and the International Finance Corporation, Brussels, 20 March 2009, http://ec.europa.eu/europeaid/sites/devco/files/agreement-cofinancing-ec-wb-2009bis_en.pdf (last accessed 14 February 2017).

¹⁰³ Framework Agreement between the European Commission on behalf of the European Union and the International Bank for Reconstruction and Development, the International Development Association, the International Finance Corporation and the Multilateral Investment Guarantee Agency, signed in Brussels on 30 July and in Washington on 15 August 2014.

¹⁰⁴ World Bank, European Commission and World Bank sign agreement to boost development cooperation, Press release, 15 April 2016, www.worldbank.org/en/news/press-release/2016/04/15/european-commission-and-world-bank-sign-agreement-to-boost-development-cooperation (last accessed 14 February 2017).

Commission and the World Bank exchange information and coordinate on development cooperation, conduct policy dialogues on trade and agriculture and cooperate in the area of global public goods.¹⁰⁵

However, the gap between the EU's financial contribution and its representation in the World Bank persists and proposals to combine the various EU Member State Executive Directorates into a single EU seat on the Board of Directors have so far received little support from EU Member States.

5. CONCLUSIONS

Despite the Union's major role in international trade, finance and development, its political influence in many UN economic governance fora remains limited. While recent reforms have contributed to making EU internal coordination and external representation more effective, external obstacles, in particular the Union's limited participation rights in most UN bodies, remain. As the 2010-2011 negotiations on the upgrade of the EU's observer status in the UN General Assembly have shown, political willingness to strengthen the Union's rights is often lacking – both in the EU Member States who may fear a silent “competence creep” and in third countries which may be concerned about setting a precedent. Even in those rare fora where the EU has obtained membership status, cumbersome coordination and transparency requirements may place a strain on effective EU participation. In a changing political environment – both within the EU and abroad – divisions and political resistance are only likely to grow. If the EU wants to be a ‘player’, and not just a ‘payer’, at the UN level,¹⁰⁶ it needs to continue pushing for a stronger EU presence and to build on the positive dynamics created with the Lisbon Treaty.

¹⁰⁵ Viilup E (2016) The role of the World Bank in international trade policy. European Parliament, Directorate-General for External Policies, Policy Department, Briefing, DG EXPO/B/PolDep/Note/2016_29, p. 4.

¹⁰⁶ Wouters, Chané (2016), p. 322.

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